

PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY

PCT

REC'D 18 NOV 2004

WIPO

PCT

WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY

(PCT Rule 43bis.1)

To:
KAROLINE A. DELANEY
KNOBBE, MARTNES, OLSON AND BEAR, LLP
2040 MAIN STREET FOURTEENTH FLOOR
IRVINE, CA 92614

Date of mailing
(day/month/year) **16 NOV 2004**

Applicant's or agent's file reference

FOR FURTHER ACTION

See paragraph 2 below

TRIAGE.020VP

International application No.

International filing date (day/month/year)

Priority date (day/month/year)

PCT/US04/06125

01 March 2004 (01.03.2004)

28 February 2003 (28.02.2003)

International Patent Classification (IPC) or both national classification and IPC

IPC(7): A61F 05/00 and US Cl.: 606/86, 104

Applicant

TRIAGE MEDICAL, INC.

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☐ Box No. II Priority
- ☐ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☒ Box No. VII Certain defects in the international application
- ☐ Box No. VIII Certain observations on the international application

2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA/ US

Mail Stop PCT, Attn: ISA/US
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Facsimile No. (703) 305-3230

Authorized officer

David Comstock

Telephone No. (703) 308-8514

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

International application No.

PCT/US04/06125

Box No. I Basis of this opinion

1. With regard to the language, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.

- ☐ This opinion has been established on the basis of a translation from the original language into the following language _____, which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).

2. With regard to any nucleotide and/or amino acid sequence disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:

a. type of material

☐ a sequence listing

☐ table(s) related to the sequence listing

b. format of material

☐ in written format

☐ in computer readable form

c. time of filing/furnishing

☐ contained in international application as filed.

☐ filed together with the international application in computer readable form.

☐ furnished subsequently to this Authority for the purposes of search.

3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.

4. Additional comments:

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

International application No.
PCT/US04/06125

Box No. V Reasoned statement under Rule 43 bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Claims <u>NONE</u>	<u>YES</u>
	Claims <u>1-26</u>	<u>NO</u>
Inventive step (IS)	Claims <u>NONE</u>	<u>YES</u>
	Claims <u>1-26</u>	<u>NO</u>
Industrial applicability (IA)	Claims <u>1-26</u>	<u>YES</u>
	Claims <u>NONE</u>	<u>NO</u>

2. Citations and explanations:

Claims 1-26 lack novelty under PCT Article 33(2) as being anticipated by Cole et al. (US 6,068,648 A).

Cole et al. disclose a tool and method for anchoring bone tissue comprising elongate inner and outer bodies, pivotally attached levers, a pin receiving portion and wire gripping portions. The levers are pivotally actuated by a user's fingers to grip a wire. The device is used to pass a surgical fixation device completely through two pieces of bone to retain the same together. See Figures 6, 10, 12, 13 and 15-19 and column 1, line 48 - column 3, line 35.

Claims 1-3 and 23-26 lack novelty under PCT Article 33(2) as being anticipated by Miller et al. (US 5,312,410).

Miller et al. also disclose a tensioning tool comprising elongate inner and outer bodies, a pivotally attached lever, a pin receiving portion and wire gripping portions. The lever is pivotally actuated by a user's fingers to grip a wire. The tool is used in various surgical procedures to secure bone tissue. See Figures 4-7 and column 1, line 46 - column 2, line 14.

Claims 4-22 lack an inventive step under PCT Article 33(3) as being obvious over Miller et al. (US 5,312,410).

Miller et al. disclose the claimed invention except for disclosing two levers instead of only one. However, it would have been a matter of obvious design for a person of ordinary skill in the art to provide a second duplicate lever to cooperate with the first lever.

Claims 1-26 meet the criteria set out in PCT Article 33(4), and thus have industrial applicability because the subject matter claimed can be made or used in industry.

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

International application No.

PCT/US04/06125

Box No. VII Certain defects in the international application

The following defects in the form or contents of the international application have been noted:

Claim 11, line 2, "too" should be changed to -tool- and "and the" should be deleted.